BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

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IN THE MATTER OF THE NORTH HILLS	**)**	**PROPOSAL**
PETITION NO. 41I-116636 FOR DESIGNATION	**)**	**FOR**
OF A CONTROLLED GROUNDWATER AREA	**)**	**DECISION**

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Pursuant to the Montana Water Use Act, Mont. Code Ann. §§ 85-2-506 and 507, and after notice required by law, a hearing was held on April 24, 2002, in Helena, Montana, to determine if the Department shall order the area in question to be a controlled groundwater area, a temporary controlled groundwater area pending further study, or reject the petition for a controlled groundwater area (CGA). The Department (DNRC) has considered the evidence and expert testimony submitted concerning the petition.

PARTIES

All individuals that signed the Petition, testified at the hearing, or submitted written comment prior to the record closing are considered Parties. Proponents of the proposed controlled groundwater designation who testified at the hearing were: Gerald Maykuth; Tona Pierson; Lesley Strausbaugh; Linda Moots; Herman Woehl; Vivian Drake; Phyllis Brookshire; Beverly Herman; Cathy Kaiser; Jay Rosberg. Opponents testifying were: Dean Retz; Dennis Iverson[1]; Patrick Faber[1], Aqua Bona Consulting, as a witness for the Helena Realtors' Association (written submission) and as a party; Jon Pallister; Paul Drennon; Larry Marshall; Byron Stahly; Rick Kenison; Bridget Holland, Helena Building Industry Association. Persons neither proponents or opponents testifying were: Anita Varone, Lewis and Clark County Commissioner; Sharon Haugen, Lewis and Clark County Health Department; Norman M^{c}Adams and Daniel Stinson, Plan Helena. Individuals who submitted written comments regarding the proposed controlled groundwater designation prior to or at the hearing were: John F. Baucus, Sieben Ranch Company; Bill Bluck, President, Lone Mountain Corporation; William Butler;

[1] Listed Michael Kakuk as Counsel

Jannis Conselyea; Lorene Guettler; Darrell and June Hegen; Larry Holman; Larry Kolb; David and Elizabeth Marshall; Mary Lou McGhee; Janet Pallister and Frank Talseth; Marjorie D. Petersen; Francis Quinn; George and Cathy Rice; Dick R. Rogers; Keith W. Smith; Robert H. Sprute; Scott Throm and Shannon O'Reilly; Natasha Wigen.

EXHIBITS

Written comment or information received before and at the hearing, and the allowed post hearing responses were assigned a sequential exhibit number by the Hearing Examiner. There were thirty-six (36) such documents. Petition documents and DNRC processing documents (e.g., Final Environmental Assessment [EA]) are not labeled as exhibits.

ISSUES

The Petition alleges: a) that groundwater withdrawals are in excess of recharge to the aquifer or aquifers within the area, b) excessive groundwater withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the groundwater area, c) significant disputes regarding priority of rights, amounts of groundwater in use by appropriators, or priority of type of use are in progress within the groundwater area, d) groundwater levels or pressures in the area in question are declining or have declined excessively, e) excessive groundwater withdrawals will cause contaminant migration, f) groundwater withdrawals adversely affecting groundwater quality within the groundwater area are occurring or are likely to occur.

The Petition proposes that the Department: (1) perform a comprehensive hydrogeologic study of the area to characterize and quantify the current and future availability of groundwater, (2) cooperate with the Department of Environmental Quality (DEQ) to assess the nature and extent of changes in groundwater quality for current and future uses, and (3) close the area to further appropriation of groundwater, except for replacement wells, during the term of the study.

Some opponents contest these allegations in their entirety; others oppose only those portions which request closure to further appropriations (well drilling moratorium) during the term of a study.

PRELIMINARY MATTERS

The file inventory prepared prior to the hearing lists a letter from Mitchell Reynolds to the Lewis and Clark Water Quality Protection District (WQPD) dated April 20, 1999. This letter cannot be found in the file. Instead a letter from "Robert E. Davis to the WQPD dated April 20, 1999, and indicating a copy to Mitchell Reynolds, is in the file. All attempts to locate the "Mitchell Reynolds" letter failed. For purposes of this hearing, the Hearing Examiner assumes the file inventory incorrectly listed Mitchell Reynolds instead of Robert E. Davis as the author of the April 20, 1999 letter. The Davis letter of April 20, 1999 will replace the Mitchell letter in the file inventory.

The record was left open until May 10, 2002, to receive responses from the Parties on evidence received into the record prior to or at the hearing. The record also remained open until June 7, 2002, for staff expert Russell Levens', DNRC Hydrogeologist, written evaluation of the technical evidence in the record including that received at the hearing. Mr. Levens' report was received May 30, 2002. Copies of the report can be requested by contacting Jill Wilkinson (406.444.6615) at the Department's Water Resources Central Office, 48 N. Last Chance Gulch, Helena, MT. Parties were instructed at hearing that exceptions to Mr. Levens' evaluation should be included in exceptions to the proposal for decision.

Wherefore, based upon the record in this matter, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The petition received July 2, 2001, and subsequent amendment received July 30, 2001, is a valid petition asking DNRC to perform a comprehensive hydrogeologic study to characterize and quantify the current and future availability of groundwater in the area, and to close the designated area to further appropriation except for

replacement wells during the term of the study. (Department file)

2. The 52.5 square mile proposed controlled groundwater area is generally located 10 miles north of Helena, Montana. The proposed area has Lincoln Road for a portion of its southern border, and is split by Interstate Highway 15 running north-south through the area. More specifically the area lies within Sections. 1-19, Township 11 North, Range 3 West; Sections 1-3, E½ 4, E½ 9, 10-15, 22-24, Township 11 North, Range 4 West; Sections 26-35, Township 12 North, Range 3 West; Sections 21-23, 25-28, E½ 33, 34-36, Township 12 North, Range 4 West, Lewis and Clark County, Montana. See map for exact proposed boundary. (Department file)

3. Wells in the proposed North Hills CGA obtain water from faults and fractures in the Precambrian-age bedrock and, to a lesser extent in certain areas, Tertiary-age sedimentary rocks and unconsolidated alluvium. (Levens 5/30/02 Memo)

4. The amount of water transmitted through faults and fractures or produced through wells in the North Hills aquifer system is highly variable, and depends on the flow properties of fractures and their interconnection. (Levens 5/30/02 Memo)

5. The overall storage capacity of fractures and faults in the North Hills aquifer system is highly variable but generally low. (Levens 5/30/02 Memo)

6. Depths and yields of wells vary over relatively short distances as a result of the occurrence of, and the variable flow and storage properties of, fractures in the bedrock. (Levens 5/30/02 Memo)

7. The southern portion of the proposed CGA overlies an alluvial aquifer and a bedrock aquifer. The alluvial aquifer has not experienced water supply problems. Aquifer conditions and continuity in the alluvium with the bedrock aquifer may be important in determining water availability in underlying bedrock and therefore may need to be considered in any study of the proposed CGA. (Department file, Levens 5/30/02 Memo)

8. There are areas of high nitrates mapped over the same area

covered by the alluvial aquifer. It is not known if the high nitrates are in both alluvial or bedrock aquifer wells. (Department file)

9. Average annual precipitation in the North Hills is unknown, but is estimated to be between 10 and 16 inches. Precipitation at the Helena Airport during the past three years and six of the last eight years has been below average. (Department file, Figure 2, Thamke & Reynolds, *Hydrology of the Helena Area Bedrock, West-Central Montana, 1993-1998*, Water Resources Investigation Report 00-4212, United States Geological Survey, Levens 5/30/02 Memo)

10. The 2001 census shows a population increase of 71.36% in the northwest portion of the Helena Valley in the previous decade. The proposed Controlled Groundwater Area (CGA) is in the northern portion of this Helena Valley area and is experiencing a portion of this population increase. (Department file, Levens 5/30/02 Memo)

11. Some of the population increase is served by (subdivision) public water supply wells; all of the domestic uses in the North Helena Valley area are served by groundwater wells. Population growth trends, regardless of the exact number of platted subdivision lots, indicate that groundwater withdrawals are certain to increase in the future. (Department file)

12. The concern expressed by those that have wells is that if they need to deepen or replace their well, they may not find water or have the financial resources to re-drill their well. (Testimony of proponents)

13. Additional domestic use for existing subdivided lots and any future subdivisions that may be approved may impact existing rights to groundwater. It is also stated that much of the water used for indoor domestic purposes may eventually return to the aquifer through septic systems. It is not known whether the proposed additional domestic uses will impair existing rights. (Department file, Kaczmarek Report [Exhibit 12])

14. There is no evidence of wasteful use of water within the proposed CGA. However, different uses consume different amounts of water.

Water applied for lawn irrigation is mostly consumed by plant transpiration, and high evaporative losses due to solar radiation and wind. Indoor domestic use and stock water probably contribute relatively little to aquifer consumptive use and probably could be allowed without impacting existing water uses and any area hydrogeologic study. Water conservation methods have been used by a subdivision in the area to minimize water loss. (Comment of David C. Marshall, Testimony of Larry Marshall [Skyview Subdivision], Levens 5/30/02 Memo)

15. The petitioner's estimate aquifer withdrawals within the proposed CGA at about 10,000 acre-feet (af) per year (1,001 wells x 10 af/water right). The Department Final Environmental Assessment used the DNRC Water Right Records to estimate withdrawals at 3,637 af per year. Department records generally show maximum allowable water use rather than actual use in any given year. However, the actual amount of water withdrawn is not documented. Mr. Levens proposes metering all wells drilled from this day forward to help determine how much water is withdrawn from the aquifer. (Department file, Levens 5/30/02 Memo)

16. Most recharge probably occurs in the upper ten sections of the proposed CGA (6,400 acres). When runoff, soil moisture deficit, and evapotranspiration are ignored, and fourteen inches of precipitation is applied to the recharge area, 7,500 acre-feet per year would be available for recharge. However, without knowledge of the runoff and evapotranspiration, this number is not useful to estimate recharge to the aquifers. The amount of recharge the area aquifers receive from outside the proposed CGA is unknown. Improved estimates of recharge and discharge (including consumptive withdrawals) are needed in order to evaluate whether groundwater withdrawals exceed recharge. (Department file, Kaczmarek Report [Exhibit # 12], Faber Report [Exhibit # 18], Levens 5/30/02 Memo)

17. The upward trend in the number of groundwater rights issued in the proposed CGA parallels trends in Lewis and Clark County septic system permits, number of households, and number of subdivisions. Thus, increasing groundwater withdrawals are likely to occur.

(Department file)

18. Studies to define the nature and distribution of recharge often are inaccurate, speculative, or inconclusive. Information on fractures and faults in the bedrock aquifer and water balance estimates obtained through a study could be augmented with information from future wells. Completion information, water level responses, and hydrogeologic data collected on all new wells and detailed studies conducted by water right applicants could augment study data. More than two to four years may be needed to complete such studies. (Levens 5/30/02 Memo)

19. The dispute referenced in the petition is actually a complaint to the Department regarding an irrigation well use alleged to have impacted a neighbor's well. The complaint was investigated by the Department. The problem with the well of the person filing the complaint was found to be due to "low production potential of the fractures and joints of the bedrock aquifer in which the well is completed." The petition suggests objections submitted by area groundwater appropriators to issuance of new water use permits in the area are disputes. The Petitioners do not state whether these objections to issuance of a water use permit resulted in actual complaints or court actions as a result of a permit being issued in spite of the objections. (Department file, Levens 5/30/02 Memo)

20. The lack of recorded disputes could be a result of dry well owners choosing to deepen or replace their wells rather than place a 'call' for water and try to prove a junior well owner is the cause. (Department file)

21. The WQPD maintains a list of wells with problems with reduced water levels. In excess of fifty wells are reported to have dried up prior to July 2001 in the North Helena Valley; some are within the proposed CGA. More than thirty of these wells have been replaced or deepened. There are at least 796 wells within the proposed CGA.(Department file)

22. The number of wells with problems or drying up is increasing. Yet, there is evidence of declining water levels in some wells while other wells in the area do not show declines. (Department file)

23. Water levels measured in 12 wells within the proposed CGA by the United States Geological Survey (USGS) for the period January 1992 through May 1998 do not indicate an overall declining trend. Water levels measured in 6 wells in the North Hills by the U.S.G.S. from 1998 to the present indicate groundwater levels have generally declined from 1998 to the present. (Levens 5/30/02 Memo)

24. Limited recharge during the recent drought, exacerbated by the groundwater flow and storage properties of the fractured bedrock aquifer system, is probably the primary cause of water level declines in the area. (Levens 5/30/02 Memo)

25. Nitrate concentrations in 15 samples from wells within the proposed CGA analyzed by the U.S.G.S. between 1994 and 1998 ranged from 0.05 to 17 mg/l. The maximum contaminant level (MCL) of 10 mg/l set by EPA for public water supplies is exceeded in one well (Thamke, 2000). Ongoing sampling of nitrates in wells in the North Hills by the WQPD indicate nitrate concentrations may be increasing in other domestic wells. Nitrate concentrations in two public water supplies are increasing. Nitrate concentrations are not available for enough wells or for a long enough time to clearly demonstrate the extent that nitrate concentrations are increasing in the North Hills aquifer system. (Department file, Levens 5/30/02 Memo)

26. Groundwater withdrawals can cause groundwater contaminated by septic effluent to migrate in an aquifer. However, proliferation of septic drain fields, regardless of water withdrawal, probably is the primary factor determining nitrate concentrations. (Department file, Levens 5/30/02 Memo)

27. Groundwater withdrawals have not been shown to adversely affect groundwater quality. The record suggests septic system density is more likely to effect water quality. (Department file)

28. Concentrations of nitrates in groundwater, regardless of source, are likely to increase in the North Hills as growth continues, potentially making groundwater unsuitable to drink without treatment. (Department file, Levens 5/30/02 Memo)

Based upon the foregoing Findings of Fact, the Hearings Examiner makes the following:

CONCLUSIONS OF LAW

1. The Department has jurisdiction over the parties and over the subject matter herein. Mont. Code Ann. §§ 85-2-506 and 507. See Finding of Fact Nos. 1, 2.

2. The Department shall declare the area in question to be a controlled groundwater area if the Department finds the public health, safety, or welfare requires a corrective control to be adopted, **and** there is a wasteful use of water from existing wells or undue interference with existing wells, 2.) any proposed use or well will impair or substantially interfere with existing rights to appropriate surface water or groundwater by others; **or**, 3.) if any of the following are true, a.) groundwater withdrawals are in excess of recharge to the aquifer or aquifers within the groundwater area, b.) excessive groundwater withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the groundwater area, c.) significant disputes regarding priority of rights, amounts of groundwater in use by appropriators, or priority of type of use are in progress within the groundwater area, d.) groundwater levels or pressures in the area in question are declining or have declined excessively, e.) excessive groundwater withdrawals would cause contaminant migration, f.) groundwater withdrawals adversely affecting groundwater quality within the groundwater area are occurring or are likely to occur, or g.) water quality within the groundwater area is not suited for a specific beneficial use defined by § 85-2-102(a) Mont. Code Ann. § 85-2-507(2).

3. The evidence shows the public health, safety, or welfare of the groundwater users in the proposed CGA is of concern because of declining water levels and increasing nitrate levels. However, facts are insufficient at this time to require permanent corrective controls to be adopted on this basis. Mont. Code Ann. § 85-2-102(19), 312(1), 507(2)(a). See Finding of Fact Nos. 7, 12, 21.

4. The evidence does not show there is a wasteful use of water from existing wells or undue interference with existing wells. It does show lawn watering and sprinkling may be a highly consumptive use of water. Lawn watering, however, is not found to be a waste of water. If lawn watering were wasteful, as opposed to highly consumptive, all existing uses as well as future uses for lawn watering would have to be stopped. Agricultural irrigation may also be highly consumptive, but these larger projects typically are analyzed in greater depth in the more rigorous permitting process. Impacts of water consumed versus water returned to the aquifer are generally not looked at for smaller domestic uses. Mont. Code Ann. §§ 85-2-102(19), 312(1), 507(2)(b)(i). See Finding of Fact No. 14.

5. The evidence is not sufficient to show that any proposed use or well will impair or substantially interfere with existing rights to appropriate surface water or groundwater by others. Mont. Code Ann. § 85-2-507(2)(b)(ii). See Finding of Fact Nos. 13, 14.

6. The actual amount of groundwater withdrawals is not known. Natural fluctuations in groundwater levels can mask or increase the severity of impacts of groundwater development. Metering some, but not all uses, will still provide but an estimate. Whether these are "excessive withdrawals" cannot be determined until the aquifer recharge and discharge relationships are better understood, and the amount of water withdrawn is better estimated. Thus, a conclusion that groundwater withdrawals are in excess of recharge to the aquifer or aquifers within the groundwater area is not possible at this time. Mont. Code Ann. §§ 85-2-507(2)(b)(iii) and 506(2)(a). See Finding of Fact Nos. 15, 16, 17, 18.

7. The conclusion that excessive groundwater withdrawals are likely to occur in the near future because of consistent increases cannot be reached at this time. The relatively rapid pace of development in the North Hills is reason to be concerned that future groundwater development could have adverse impacts on current water users. However, there are no records that exist upon which to base a reliable estimate of water withdrawals in the North Hills area. Nor are there

facts telling whether the drought or withdrawals are having a greater affect on existing wells. Without knowledge of the aquifer recharge to compare with aquifer withdrawals, the conclusion that these withdrawals are excessive cannot be reached. Mont. Code Ann. §§ 85-2-507(2)(b)(iii) and 506(2)(b). See Finding of Fact Nos. 13, 15, 16, 17, 18, 24.

8. The evidence does not show significant disputes regarding priority of rights, amounts of groundwater in use by appropriators, or priority of type of use are in progress within the groundwater area. One formal well interference complaint is not a significant dispute for an area the size of this proposed CGA. Objections to a water right permit application are not disputes; instead, they are merely a part of the permitting process. Mont. Code Ann. §§ 85-2-507(2)(b)(iii) and 506(2)(c). See Finding of Fact Nos. 19, 20.

9. Groundwater levels in some wells in the proposed CGA are declining or have declined excessively. However, adjacent to wells with declining levels are wells with increasing or static levels. The area is in its fourth successive year of drought. The cause of the decline and inconsistent water level trends must be explained prior to determining what, if any, controls need to be implemented. Mont. Code Ann. §§ 85-2-507(2)(b)(iii) and 506(2)(d). See Finding of Fact Nos. 21, 9, 22, 23, 24.

10. Because a well owner is experiencing problems may not mean the aquifer should be closed to additional appropriations. Appropriators have a responsibility to construct an adequate means of diversion that reasonably penetrates the aquifer. To hold that an appropriator is entitled to maintain wells that penetrate only the top of an aquifer against subsequent appropriators would be to allow a single appropriator or a limited number of appropriators to control an entire aquifer simply to make their own means of diversion easier. *See In The Matter of* Application 41R-31441 by McAllister, Proposal for Decision, (1985); 41B-71133 by Hildreth, Proposal for Decision (1989); 41QJ-78511 by Big Stone Colony, Proposal for Decision, (1992). Mont. Code Ann. §§ 85-2-311(1)(c), 402(2)(b), and 508 Finding of Fact Nos. 12,

19, 20.

11. The evidence shows the nature of the bedrock aquifer is such that excessive groundwater withdrawals would only cause contaminant migration if the fractures encounter water containing high nitrates. The pattern of increasing nitrates seems to follow subdivision development. It has not been shown that the cause is the increasing number of septic systems or the parallel increase in groundwater withdrawals. Mont. Code Ann. §§ 85-2-507(2)(b)(iii) and 506(2)(e). See Finding of Fact Nos. 8, 25, 26.

12. The evidence does not indicate groundwater withdrawals adversely affecting groundwater quality within the groundwater area are occurring or are likely to occur. Mont. Code Ann. §§ 85-2-507(2)(b)(iii) and 506(2)(f). See Finding of Fact No. 27.

13. The evidence does not show water quality within the groundwater area is not suited for a specific beneficial use defined by § 85-2-102(a) unless the trend of higher nitrate levels is allowed to exceed safe drinking water standards. To date, this has happened in one well. The Montana Department of Environmental Quality has not determined the area water quality has or will decline to unacceptable levels. When such a finding is made and it is found that migration of contaminated water will be exacerbated by withdrawals, controls may be appropriate. The cause and migration pattern would be necessary in determining needed controls. Mont. Code Ann. §§ 85-2-507(2)(b)(iii) and 506(2)(g). See Finding of Fact No. 28.

14. When a controlled groundwater area is designated, a person may only appropriate groundwater by applying for and receiving a permit according to Mont. Code Ann. § 85-2 Part 3. However, the DNRC may not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the CGA to yield groundwater within a reasonable or feasible pumping lift. Mont. Code Ann. § 85-2-508.

15. Temporary controlled groundwater areas are allowed only when there are not sufficient facts available to designate or modify a permanent controlled groundwater area. A temporary controlled groundwater area may be designated to allow for studies to determine

if a permanent controlled groundwater area is necessary and what controls would be effective in addressing the risks of adverse effect. The circumstances here are appropriate for a temporary designation. There are indications that a permanent controlled groundwater area may be needed at some point in the future, but the information that might allow the DNRC to determine that point is not yet available. Mont. Code Ann. § 85-2-507(2)(5).

16. A temporary controlled groundwater area can only be established for two years and the DNRC can extend the period for one additional two-year period. Since the necessary studies are expected to exceed 4 years, it may be necessary to re-establish the proposed CGA after 4 years. Mont. Code Ann. § 85-2-507(5). See Finding of Fact No. 18.

17. Establishing a temporary controlled groundwater area can eliminate the exception from permitting requirements typically enjoyed by small uses including single households. Generally, groundwater appropriations that do not exceed 35 gallons per minute and 10 acre-feet per year do not require a permit from DNRC. Mont. Code Ann. § 85-2-306. Nor is DNRC's prior approval for replacing such wells required. Mont. Code Ann. § 85-2-402(15). In a temporary controlled groundwater area, however, controls can require all new appropriations to apply for and obtain a permit, Mont. Code Ann. §§ 85-2-507 (4), (5), and replacement wells may require the DNRC's prior approval. Allowing new wells with monitoring while also limiting uses from the new wells will serve to increase knowledge of the aquifer, minimize water consumption, and allow continued, albeit controlled, development of and within the area.

18. All applicants for new permits and change authorizations in a temporary controlled groundwater area can be required to submit or allow to be gathered information such as lithologic logs, water level measurements, water chemistry, aquifer test data, and well construction details. On-going monitoring of withdrawals and static water levels for new permits can be required on a case-by-case basis where such information may be necessary to establish the criteria in Mont. Code Ann. § 85-2-507(4)(g). This information may be a critical

component of the on-going studies. The WQPD has authority and history of involvement in this activity. See Finding of Fact 21.

19. At this time, the facts do not support area-wide controls other than requiring the permitting of *all* new wells within the temporary controlled groundwater area. DNRC may waive notice if on the basis of information reasonably available to it, the appropriation as proposed in the application will not adversely affect the rights of other persons or be contrary to the intent of this order. If at any time during the temporary controlled groundwater area and study, information becomes available to show that withdrawals have, or are about to, exceed recharge, the temporary groundwater area can be designated permanent and modified to include appropriate controls after notice and hearing as provided in Mont. Code Ann. § 85-2-507.

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner makes the following:

PROPOSED ORDER

A temporary controlled groundwater area is designated for the 52.5 square mile area within Sections 1-19, Township 11 North, Range 3 West; Sections 1-3, E½ 4, E½ 9, 10-15, 22-24, Township 11 North, Range 4 West; Sections 26-35, Township 12 North, Range 3 West; Sections 21-23, 25-28, E½ 33, 34-36, Township 12 North, Range 4 West, Lewis and Clark County, Montana. See attached map for exact boundaries. The designation shall be in effect for two years from the date of the Final Order. At the end of two years the Department will decide to terminate, extend as is, or extend with modifications the temporary controlled groundwater area.

The purpose of the designation is for gathering information on aquifer fractures, faults, and characteristics; aquifer recharge; and aquifer withdrawals to determine if withdrawals exceed recharge (capacity of the aquifer); if new wells will impair or substantially interfere with other groundwater wells; and if there is a contaminant plume developing that will be affected by withdrawals. With this designation, all new uses of groundwater and replacement wells in the designated area must obtain a new use permit or change authorization

from the DNRC.

New groundwater appropriators and those seeking to drill replacement wells in the area must first apply to the Department's Helena Water Resources Regional Office and obtain a license for drilling and testing purposes conditioned to allow the applicant and DNRC to gather data and information necessary for completing the application for permit or change authorization. The license may be conditioned to require 5-day advance notice of drilling to the Department's hydrogeologist to ensure adequate logging of appropriate lithologic, water chemistry, water level, aquifer test, and well construction data.

Water users should consult and work with the DNRC and WQPD in compiling, organizing, archiving, and interpreting area-wide information. If it appears that further study is necessary after the term of the temporary controlled groundwater area has expired, a new temporary area can be designated after notice and hearing as provided in Mont. Code Ann. § 85-2-507. If at any time during the term of the temporary controlled groundwater area, information becomes available to show that withdrawals have, or are about to, exceed recharge, the temporary groundwater area can be designated permanent and modified to include appropriate controls after notice and hearing as provided in Mont. Code Ann. § 85-2-507.

NOTICE FOR FILING EXCEPTIONS

This proposal may be adopted as the Department's final decision unless timely exceptions are filed as described below. Any party adversely affected by this Proposal for Decision may file exceptions with the Hearing Examiner. The exceptions must be filed within 30 days after the proposal is mailed. Exceptions must specifically set forth the precise portions of the proposed decision to which the exception is taken, the reason for the exception, authorities upon which the party relies, and specific citations to the record. Vague assertions as to what the record shows or does not show without citation to the precise portion of the record will be accorded little attention. Parties may file responses to any exception filed by another party.

The responses must be filed within 20 days after service of the exception and copies must be sent to all parties. No new evidence will be considered.

Dated this _____day of July, 2002.

Charles F Brasen, Hearing Examiner
Water Resources Division
Department of Natural Resources
and Conservation
P.O. Box 201601
Helena, MT 59620-1601

North Hills Proposed Temporary Controlled Groundwater Area

Insert Map (as proposed) attachment here.